

APPROVED



**SCOTTSDALE BOARD OF ADJUSTMENT
3939 N. Drinkwater Boulevard
Kiva at City Hall
Scottsdale, AZ
December 8, 2004
6:00 PM
MINUTES**

PRESENT: James Vail, Chair
Terry Kuhstoss, Vice Chair
Jennifer Goralski, Board Member
Ernest Jones, Board Member
Carol Perica, Board Member
Howard Myers, Board Member

ABSENT: Neal Waldman, Board Member

STAFF: Donna Bronski
Cheri Scott
Keith Neiderer
Tim Curtis
Al Ward

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:03 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above. Chair Vail noted that Commissioner Waldman's absence was excused due to illness.

APPROVED 2/2/2005

APPROVAL OF MINUTES

1. October 6, 2004

Vice Chair Kuhstoss moved to approve the minutes as presented. Commissioner Jones seconded the motion. The minutes were approved as presented by a vote of six (6) to zero (0).

REGULAR AGENDA

CHAIR VAIL explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment.

2. 13-BA-2004 Milde Home Addition Request approval for a variance from Article V, Section 5.204E.1 regarding front yard setback requirements along Dusty Miller Court frontage on property with Single Family Residential, Environmentally Sensitive Lands, (R1-43 ESL) zoning and located at 39204 N Boulder View Drive.

MR. KEITH NEIDERER presented the case per the staff packet. He noted that staff had received five E-mails and/or telephone calls in support of this variance request. Mr. Neiderer responded to questions from the Board Members.

MS. MILDE, 39204 N Boulder View Drive, addressed the Board. She referred to a question asked by Commissioner Myers in the Study Session. She stated that the property was platted as part of Maricopa County, with a setback requirement of 30 feet. She pointed out the 30-foot setback enjoyed by the neighbor across the street, and the nine other homes built between the time the subdivision was platted and annexation by Scottsdale. Ms. Milde went on to note that more than a third of the property was devoted to NAOS, and more than half was open desert. She also referred to the subdivision to the south on Boulder View and noted that those properties enjoy setbacks requirements of 30 feet.

MR. NEIDERER explained that the Boulder Heights sub-division, referred to by Ms. Milde, had been given amended development standards due to dedication of excess NAOS.

(Chair Vail opened the meeting to public comment).

MR. ROB HARDY, 11120 E Carefree Drive, spoke in favor of the variance request. He noted that the previous owners had denuded the property of any

vegetation, and that the Mildes had expended significant effort to revegetate. Mr. Hardy also referred to the Boulder Heights sub-division and stated, even though the ESLO requirements had been met, prior to construction, the lots are bladed and all vegetation removed. He proposed that some consideration should be given to homeowners who expend the time and effort to revegetate their property. He also stated that the addition proposed by the Mildes would not be visible from the street, and that there was no opposition to the request from any of the neighbors.

(Chair Vail closed public comment)

COMMISSIONER PERICA commended the applicant on the improvements they have made to the property; however she noted her decision on the variance request was not based on the improvements. She stated that she felt the four criteria had been met, and referred to the position of the home when it was purchased. Commissioner Perica stated that she would vote to support the variance request.

VICE CHAIR KUHSTOSS agreed that the proposed plan was a nice idea, but stated that the four criteria had not been satisfied. She noted that looking at what has occurred in another subdivision does not imply that those same rights apply elsewhere. She also stated that past errors by the city did not mean that the same error should be made again, and voiced her determination to deny the variance.

CHAIR VAIL expressed his conviction that the applicant had met the four criteria. He referred to the 20-foot setback and that fact that the applicant was not further infringing on that setback. He stated his support for the variance.

COMMISSIONER GORALSKI concurred with Vice Chair Kuhstoss. She stated that three of the criteria had been met, but not the fourth, relating to special circumstances. She stated that she could not support the variance request.

COMMISSIONER MYERS commented on his frustration with differentiating between ESL and other areas in the city with regard to setbacks. He observed that the variance would not be detrimental to the neighborhood, however, stated his opinion that that a solution could be reached within the ordinance parameters. He stated his agreement with Vice-Chair Kuhstoss and his decision to deny the variance.

COMMISSIONER JONES commented that the positives outweighed the negatives for the case. He commended the applicant for their efforts in making the area beautiful. He stated he would support the variance.

CHAIR VAIL reminded the applicant that in order to obtain the variance, they must receive for positive votes. He noted that, as one Commissioner was absent, he would avail the applicant of the opportunity to request a continuance. Chair Vail stated that there was, of course, no guarantee that seven Commissioners would be present at future meetings. Ms. Bronski concurred with Chair Vail's statement.

MS. MILDE requested a continuance of the case.

VICE CHAIR KUHSTOSS MOVED TO CONTINUE CASE NUMBER 13-BA-2004 TO THE FEBRUARY 2, 2005 MEETING. COMMISSIONER MYERS SECONDED THE MOTION.

COMMISSIONER GORALSKI requested clarification from Ms. Bronski as to the ability of the Board to select a specific meeting for the continued case. Ms. Bronski assured her that it was within the purview of the Board to select the meeting of its choice.

VICE CHAIR KUHSTOSS RESTATED HER MOTION, AND COMMISSIONER MYERS RESTATED HIS SECOND. THE MOTION PASSED BY A VOTE OF FIVE (5) TO ONE (1), WITH COMMISSIONER PERICA VOTING "NAY".

3. 14-BA-2004 Marshall Deluca Residence Request approval for a variance from Article V, Section 5.204E.1 regarding front yard setback requirements on property with Single Family Residential, (R1-35) zoning and located at 8020 E Sharon Drive.

MR. AL WARD presented the case per the staff packet. He pointed out the presence of three forty-foot setbacks due to lot frontage on three streets. He noted that staff had received no letters, E-mails or telephone calls regarding this variance. Mr. Ward responded to questions from the Commissioners.

JOHN DELUCA, applicant, 8020 E Sharon Drive, presented his case to the Commission. He discussed a number of different options other than the one presented to the Commission, and stated that none of them would be viable. He pointed out that the side of his property bordering the wash is unusable due to the fact that the wash is twice as big as it legally should be. Mr. Deluca pointed out that the wash should be 30 feet wide, but is in reality 60 feet wide, thus eliminating any possibility for an addition on that side. He went on to note that only 39 percent of the square footage of his lot is usable due to the setback requirements.

MR. DELUCA went on to describe three other homes in the area with three street frontages, and noted that the forty-foot setback requirement has not been applied. He stated that there was no opposition to the variance from any of his neighbors. He responded to questions from the Commissioners.

COMMISSIONER PERICA inquired whether Mr. Deluca had contacted the city regarding changing the easement. Mr. Deluca replied that he had, but that the issue remained unresolved. Mr. Ward added he had not spoken specifically to the water department on this issue.

CHAIR VAIL inquired as to vegetation in the area of the proposed garage, and whether or not it could be protected. Mr. Deluca replied that native vegetation would be protected and that the two pine trees would need to be relocated.

COMMISSIONER MYERS asked for more in depth discussion relative to the drainage easement. He also asked for clarification as to the forty-foot setbacks, and wall setbacks applicable in this case.

(Chair Vail opened public comment.)

MR. BILL PARKER, 8013 E. Sharon Drive, spoke in favor of the variance request. He also pointed out the width of the drainage ditch and noted that the changes proposed by the applicant would not affect his view or be detrimental to the neighborhood.

ANNALISE GAUN, 8014 E. Sharon Drive, also spoke in favor of the variance. She stated that the wall and garage in the area proposed would improve the neighborhood and deter theft

(Chair Vail closed public comment.)

MR. DELUCA again discussed the problems associated with the water drainage and the impact it has had on his plans.

CHAIR VAIL stated that he felt it was critical for the Board to hear additional information from the city about the wash before taking any action on this case. The Commissioners concurred.

MS. BRONSKI stated that it was at the discretion of the Board to continue the case, and to direct staff to further investigate the issues discussed.

VICE CHAIR KUHSTOSS MOVED TO DIRECT STAFF, INCLUDING THE CITY ATTORNEY TO FORWARD THE INFORMATION TO THE BOARD, AND TO CONTINUE CASE 15-BA-2004 UNTIL THE FEBRUARY 2

MEETING. COMMISSIONER PERICA SECONDED THE MOTION. CHAIR VAIL CLARIFIED THAT THE BOARD WOULD BE ASKING STAFF TO INVESTIGATE WHAT HAD OCCURRED WITH THE WIDENING OF THE EASEMENT AND THE WASH, AND THE CIRCUMSTANCES RELATED TO THE OTHER HOMES REFERRED TO BY MR. DELUCA THAT DID NOT MEET THE 40-FOOT SETBACK REQUIREMENTS. VICE CHAIR KUHSTOSS ADDED THAT A POSSIBLE SOLUTION TO THE DRAINAGE EASEMENT SITUATION SHOULD BE INCLUDED AS WELL. COMMISSIONER MYERS REQUESTED FURTHER CLARIFICATION AS TO WHETHER OR NOT THE CITY HAS STATED A PREFERENCE FOR AN ENTRANCE TO THE PROPERTY FROM EITHER EIGHTY-FIRST STREET OR SHARON. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF SIX (6) TO ZERO (0).

CHAIR VAIL expressed his apologies to the applicant for the delay, but stated that ultimately it would be in Mr. Delucas's best interest to continue the case.

MR. DELUCA requested that, should the city determine that the drainage easement exceeded the legal limit, that replacement of the dirt should occur expeditiously so as to allow project completion within a timely fashion. Chair Vail replied that such an assurance was not within the purview of the Board, but that he was confident that the city would not delay the replacement unnecessarily.

(The Board recessed at 7:40 pm.)

(Chair Vail reconvened the meeting at 7:45 pm.)

4. 15-BA-2004 Shade Cover Request approval for a variance from Article V, Section 5.204E.12 regarding side yard setback requirements from 15 feet to 6 feet on a parcel with Single Family Residential (R1-35) zoning and located at 13318 N 76th Street.

MR. AL WARD presented the case per the staff packet, and responded to questions from the Commissioners.

MR. GREGG TOWNSLEY, applicant, 13318 N 76th Street, explained that the nine-foot variance request was being made to retain a shade structure that has been in place for three and a half years. He further explained that the shade cover is necessary to protect a vehicle employed in his home health care business for animals. Mr. Townsley stated that he has a mobile veterinarian service and has a great deal of heat sensitive equipment, including medications, in the vehicle.

MR. TOWNSLEY added that the company that installed the cover assured him that the cover was within the ordinance parameters. He noted that he has over twenty signatures from neighbors in support of the variance.

CHAIR VAIL asked for Board Member discussion of the request.

CHAIR VAIL stated that he could not support the variance request. He stated that even if the structure could be considered an awning, it would still be fourteen feet out of compliance. He stated that he empathized with the applicant's need for protection for his vehicle, but stated that the four criteria had not been met.

COMMISSIONER GORALSKI observed that the structure is not offensive to the eye and does blend in with the neighborhood. She went on to state, however, that it definitely is not in compliance with the zoning code, and does not meet the four criteria.

COMMISSIONER MYERS recognized the applicant's service to the community through his mobile veterinarian unit, and also recognized the support of the neighbors, but stated that the Board's decision must be made on the satisfaction of the four criteria. Commissioner Myers added that he could not support the request.

COMMISSIONER JONES stated that he would not support the request for the reasons outlined by the other Commissioners.

COMMISSIONER PERICA concurred and expressed her decision to deny the request as the four criteria had not been met.

VICE CHAIR KUHSTOSS echoed the remarks of her fellow Commissioners. She observed that the shade cover was a good idea, but that under the legal limitations imposed on the Board, she could not support the request.

COMMISSIONER JONES MOVED TO DENY THE REQUEST FOR CASE NO. 15-BA-2004. VICE CHAIR KUHSTOSS SECONDED THE MOTION. THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

CHAIR VAIL explained the appeal procedure to the applicant. Mr. Townsley stated that, with the denial of the variance, he would have to relocate and asked for consideration as to the elimination of any penalties until arrangements could be made.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 8:20 PM.

Respectfully submitted,

"For the Record" Court Reporters